Filed 7/24/20 P. v. Sorenson CA2/2

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. SHAWN MICHAEL SORENSON, Defendant and Appellant.	B300436 (Los Angeles County Super. Ct. No. BA476532)

APPEAL from a judgment of the Superior Court of Los Angeles County, James R. Dabney, Judge. Affirmed.

Laura R. Vavakin, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Lance E. Winters, Chief Assistant Attorney General, Susan Sullivan Pithey, Senior Assistant Attorney General, David E. Madeo and Heidi Salerno, Deputy Attorneys General, for Plaintiff and Respondent.

A jury convicted appellant Shawn Sorenson of one count of commercial burglary (Pen. Code,[1] § 459; count 1), four counts of identity theft (§ 530.5, subd. (a); counts 2–5), and 10 counts of identity theft with a prior conviction (§ 530.5, subd. (c)(2); counts 6–15). Appellant admitted a prior strike conviction (§§ 667.5, subds. (b)–(j), 1170.12, subd. (b)), and was sentenced to an aggregate term of 14 years in state prison.

On appeal, appellant contends the trial court erred in denying his motion to suppress evidence found during a warrantless search. We find no error in the trial court's ruling and affirm.

FACTUAL AND PROCEDURAL SUMMARY

On August 31, 2018, Los Angeles County Deputy Sheriffs Miguel Meza and Allan Santos were patrolling in Marina del Rey when they came across appellant sitting on the curb. After discovering appellant was on probation, Deputy Meza searched appellant's backpack and found 39 California and other state identification cards, two social security cards, three checks, and 83 W-9 forms. None of the documents was in appellant's name.

Upon further investigation after appellant's arrest, police obtained additional evidence tying appellant to the 2017 burglary of a Marina del Rey technology business in which he stole and subsequently used an employee's corporate credit card.

Prior to trial, appellant sought to exclude under section 1538.5 all evidence obtained as a result of the August 31, 2018 encounter and subsequent search by police. Appellant asserted the evidence was seized "without the authority of a search warrant" and appeared "to have been based on an illegal detention and search occurring on August 31, 2018, by deputies from the Los Angeles Sheriff's Department."

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[1] Undesignated statutory references are to the Penal Code.

At the subsequent suppression hearing, Deputy Meza testified as follows: On August 31, 2018, about 5:30 p.m., he was on patrol in a marked sheriff's vehicle with his partner Deputy Santos in Marina del Rey. While in the area of 5000 Centinela, Deputy Meza saw appellant sitting on the curb. Deputies Meza and Santos pulled over, got out of their patrol vehicle, and asked appellant his name and date of birth. Appellant provided both.

Deputy Meza entered appellant's information into the mobile digital computer (MDC) in his patrol vehicle. He testified the MDC is used on a daily basis to access "government records," and one is affixed in every patrol vehicle. A printout of the MDC's return relating to appellant indicated that appellant was on active probation that would expire on October 15, 2018.[2]

The trial court took judicial notice of the court record in the prior case and noted that appellant had originally entered a plea in the case in April 2013. He was placed on felony probation on January 30, 2014, with a "condition of his probation . . . that he submit his person and property to search and seizure any time of the day or night." The trial court further noted that probation was initially revoked on July 16, 2014, and a bench warrant issued. On July 19, 2017, appellant was found in violation of probation and sentenced to two years in county jail with a two-year credit for time served. Although the superior court had suspended proceedings,

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[2] Although the MDC printout was not admitted into evidence, the record indicates it was presented to, and considered by, the trial court. In accordance with appellant's request, we augmented the record on appeal to include a copy of this document. (See *People v. Brooks* (1980) 26 Cal.3d 471, 484–485 [augmentation serves to supplement an existing but incomplete appellate record and the rule allowing it is to be liberally construed].)

the trial court observed that it had failed to terminate appellant's probation. Because of that judicial error, the last entry in the computer system showed appellant's probation was still active and not set to expire until October 15, 2018.

Citing *Arizona v. Evans* (1995) 514 U.S. 1 (*Evans*), the prosecutor argued the good faith exception to the exclusionary rule applied because the deputies justifiably relied on information about appellant's probation status provided by the superior court. The information obtained by the police was incorrect, not through any error by law enforcement, but because of a clerical error by the superior court.

Appellant argued that because he was no longer subject to a search condition, the search was unlawful and did not fall within the good faith exception. Appellant further maintained that his encounter with the deputies was not consensual—appellant was not engaged in any criminal conduct but was merely sitting on a sidewalk when the deputies approached and demanded his information.

The trial court denied the suppression motion on the ground that the good faith exception applied because law enforcement was not involved in the superior court's error. The trial court also found the encounter was consensual, noting that law enforcement may approach anyone and ask his or her name and identification, and here the deputy did not issue any orders or demands that would have transformed a consensual encounter into a detention.

DISCUSSION

Appellant contends the trial court erred in concluding that the initial encounter with police did not amount to a detention and in applying the good faith exception to the warrantless search. We disagree.

I. The Burden of Proof on a Motion to Suppress Evidence and the Standard of Review

When police conduct a search or seizure without a warrant, the prosecution has the burden of establishing by a preponderance of the evidence that the search fell within one of the recognized exceptions to the warrant requirement. (*People v. Simon* (2016) 1 Cal.5th 98, 120; *People v. Camacho* (2000) 23 Cal.4th 824, 830; *People v. Rios* (2011) 193 Cal.App.4th 584, 590.) If the prosecution cannot meet the burden of demonstrating a legal justification for a warrantless search, the exclusionary rule generally requires the suppression of evidence obtained from the search. (*Wong Sun v. United States* (1963) 371 U.S. 471, 487–488; *People v. Suff* (2014) 58 Cal.4th 1013, 1053.) "The exclusionary rule operates as a judicially created remedy designed to safeguard against future violations of Fourth Amendment rights through the rule's general deterrent effect." (*Evans*, *supra*, 514 U.S. at p. 10.) For this reason, exclusion is not a necessary consequence of a Fourth Amendment violation; rather, it applies only where it results in "appreciable deterrence" to police misconduct. (*Herring v. United States* (2009) 555 U.S. 135, 141.) "Indeed, [as the Supreme Court has stated,] exclusion 'has always been our last resort, not our first impulse,' [citation], and our precedents establish important principles that constrain application of the exclusionary rule." (*Id.* at p. 140, quoting *Hudson v. Michigan* (2006) 547 U.S. 586, 591.)

On appeal from the denial of a motion to suppress, we review the evidence in the light most favorable to the trial court's ruling; we adopt the express and implied findings of fact that are supported by substantial evidence; and we independently determine whether those findings support the court's legal conclusions that the search was lawful. (*People v. Leyba* (1981) 29 Cal.3d 591, 596–598; *People v. McHugh* (2004) 119 Cal.App.4th 202, 209; *People v. McDonald*

(2006) 137 Cal.App.4th 521, 529.) "Further, we examine the legal issues surrounding the potential suppression of evidence derived from a police search and seizure by applying federal constitutional standards." (*People v. Superior Court* (*Walker*) (2006) 143 Cal.App.4th 1183, 1195.)

II. The Initial Encounter Between Appellant and Law Enforcement Did Not Rise to the Level of a Detention

"Unlike a detention, a consensual encounter between a police officer and an individual does not implicate the Fourth Amendment." (*People v. Rivera* (2007) 41 Cal.4th 304, 309.) The United States Supreme Court has made it clear that a detention does not occur when a police officer merely approaches an individual on the street and asks a few questions. (*Florida v. Bostick* (1991) 501 U.S. 429, 434.) As long as a reasonable person would feel free to disregard the police and go about his or her business, the encounter is consensual and no reasonable suspicion is required on the part of the officer. Only when the officer, by means of physical force or show of authority, in some manner restrains the individual's liberty, does a seizure occur. (*Ibid.*; *Wilson v. Superior Court* (1983) 34 Cal.3d 777, 789–790.) The officer's uncommunicated state of mind and the individual citizen's subjective belief are irrelevant in assessing whether a seizure triggering Fourth Amendment scrutiny has occurred. (*In re Manuel G.* (1997) 16 Cal.4th 805, 821.)

Here, the totality of circumstances surrounding appellant's arrest reveals that his presearch encounter with law enforcement was consensual. First, the mere request for appellant's name and date of birth did not amount to a show of authority sufficient to transform the encounter into a detention. (See *People v. Parrott* (2017) 10 Cal.App.5th 485, 494; *Hiibel v. Sixth Judicial Dist. Court*

(2004) 542 U.S. 177, 185 ["In the ordinary course a police officer is free to ask a person for identification without implicating the Fourth Amendment"].) Second, Deputy Meza's act of entering appellant's name and date of birth into the computer did not, in and of itself, result in any restraint on appellant's liberty. (See *People v. Bouser* (1994) 26 Cal.App.4th 1280, 1287 [mere use of defendant's name and birth date to run warrant check did not automatically transform encounter into a seizure].) Deputy Meza neither directed appellant to stay in place while he ran the information provided (cf. *In re J.G.* (2014) 228 Cal.App.4th 402, 412; *People v. Linn* (2015) 241 Cal.App.4th 46, 65 & fn. 8), nor did he take any physical identification—or other critical documentation—that might have constructively imposed a restraint on appellant's liberty (see *Florida v. Royer* (1983) 460 U.S. 491, 501 [seizure found where police requested and retained defendant's airline ticket and identification during questioning]).

In arguing he was seized, appellant relies heavily on *People v. Garry* (2007) 156 Cal.App.4th 1100 (*Garry*). *Garry*, however, has little, if any application to the circumstances of this case.

In *Garry*, a police officer was patrolling a high crime area around 11:30 p.m. when he observed the defendant standing next to a parked car. (*Garry*, *supra*, 156 Cal.App.4th at pp. 1103–1104.) The officer turned on the patrol car's spotlight, which emitted a white light and illuminated defendant, exited the car, and walked " 'briskly' " toward defendant. (*Id.* at p. 1104) Seeing the officer approach, defendant started " 'walking backwards' " " '[w]ith a look of nervousness and shock,' " and spontaneously stated, " 'I live right there,' " pointing to a nearby house. (*Ibid.*) The officer then asked defendant if he was on probation or parole and defendant responded he was on parole. (*Ibid.*) A scuffle ensued, and defendant was subsequently arrested. (*Id.* at pp. 1104–1105.)

On appeal, after reviewing a series of cases—including cases specifically discussing "police use of spotlights in the course of approaching people in public areas" (*Garry*, *supra*, 156 Cal.App.4th at p. 1107)—the court concluded a detention had occurred prior to the officer learning defendant was on parole (*id.* at pp. 1112–1113). In so holding, the court noted the trial court did not "sufficiently consider the combined, intimidating effect of [the officer's] actions," and observed the officer's testimony indicated that "immediately after spotlighting defendant, [the officer] all but ran directly at him, covering 35 feet in just two and one-half to three seconds, asking defendant about his legal status as he did so." (*Id.* at p. 1112.)

Here, unlike in *Garry,* the encounter between law enforcement and appellant occurred at 5:30 p.m. and there was no evidence indicating the officers activated any lights, much less a spotlight, at or near appellant during the encounter.[3] Nor is there any indication that Deputy Meza "all but ran" at appellant or otherwise engaged in any intimidating conduct. (*People v. Bouser*, *supra*, 26 Cal.App.4th at p. 1287 [no detention where police officer did not "draw his weapon, make any threatening gestures, or utilize his car's lights or siren"]; cf. *People v. Aldridge* (1984) 35 Cal.3d 473, 476–477 [officer's order that four individuals put down their packages and stand next to the patrol car constituted a detention].) To the contrary, Deputy Meza simply asked appellant for his name and date of birth, and then ran a records check with that information, which, as discussed above, is consistent with the trial court's finding that the encounter remained consensual.

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[3] In arguing the issue, appellant asserts that "[o]ther than the spot light [*sic*], the encounter here was quite similar to the one in *Garry*."

Appellant also claims reversal is required because the prosecutor failed to prove that the deputies did *not* display weapons, touch appellant, or otherwise block his movements. The contention lacks merit.

In reviewing a ruling on a motion to suppress, we must consider the record in the light most favorable to the trial court's ruling (*People v. Woods* (1999) 21 Cal.4th 668, 673), which "generally implies 'a finding of fact favorable to the prevailing party on each ground or theory underlying the motion' " (*People v. Solorzano* (2007) 153 Cal.App.4th 1026, 1031, quoting *People v. Manning* (1973) 33 Cal.App.3d 586, 601–602). To accept appellant's suggestion that a prosecutor must disprove each and every possible negative would effectively turn this standard on its head. It would also encourage a defendant to refrain from cross-examination and then "lay a trap for the prosecution by remaining completely silent until the appeal about issues the prosecution may have overlooked"—including any "gap in the prosecution's proof." (*People v. Williams* (1999) 20 Cal.4th 119, 130–131 (*Williams*) [discussing waiver rule in context of suppression hearings]; cf. *People v. Douglas* (2015) 240 Cal.App.4th 855, 870, fn. 9 [noting defendant, in failing to cross-examine officer about various points of testimony during suppression hearing, "did nothing to call into question [the officer's] testimony as to the [relevant circumstances]"].)[4]

Considering the record in the light most favorable to the trial court's ruling, as we must, we find no error in the trial court's

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[4] Here, the sole testimony elicited on cross-examination by defense counsel regarding the initial encounter was that Meza was in his vehicle when he first noticed appellant and that appellant was merely sitting on the sidewalk, as opposed to "noticeably committing any crime."

ruling that the presearch encounter between appellant and law enforcement was consensual. (*People v. McHugh*, *supra*, 119 Cal.App.4th at p. 209.)

III. The Trial Court Properly Applied *Leon*'s Good Faith Exception to the Warrantless Search

In *United States v. Leon* (1984) 468 U.S. 897 (*Leon*) the United States Supreme Court created the good faith exception to the exclusionary rule, holding that the exclusionary rule did not apply to evidence obtained by police officers who acted in objectively reasonable reliance on a search warrant issued by a neutral magistrate, but later was determined to be invalid. (*Id.* at p. 905.) The court stressed that suppressing the seized evidence would not serve the rule's purpose of discouraging police misconduct. (*Id.* at pp. 905–906, 909.)

In *Evans*, *supra*, 514 U.S. 1, the United States Supreme Court held that the good faith exception applied when the erroneous information was generated by court employees. (*Id.* at p. 16.) There, an officer entered the defendant's name into a computer terminal during a traffic stop and received notice of an outstanding arrest warrant. It was later learned that the arrest warrant had been quashed 17 days before the arrest, but the sheriff's office had not been notified, as standard court procedure required. (*Id.* at pp. 4–5.) The high court concluded that applying the exclusionary rule to a situation in which erroneous information had been generated by court employees was contrary to the reasoning of *Leon*: "Because court clerks are not adjuncts to the law enforcement team engaged in the often competitive enterprise of ferreting out crime, [citation], they have no stake in the outcome of particular criminal prosecutions. [Citations.] The threat of exclusion of evidence could not be expected to deter such individuals from failing to inform police officials that a warrant had been

quashed." (*Evans*, at p. 15.) "Application of the *Leon* framework supports a categorical exception to the exclusionary rule for clerical errors of court employees." (*Evans*, at p. 16; see *Herring v. United States*, *supra*, 555 U.S. at pp. 147–148 [denial of suppression motion upheld where error was attributable to mere negligence].)

Here, the record supports the trial court's finding that the absence of an entry in the relevant minute order terminating probation was an error of the superior court's making in which law enforcement had no role. The trial court thus properly applied *Evans* in concluding there was "no reason to apply . . . the exclusionary rule to the conduct of the law enforcement officer." (See *Evans*, *supra*, 514 U.S. at pp. 14–16; *People v. Hughes* (2002) 27 Cal.4th 287, 328 [reviewing court must uphold any factual findings of trial court—express or implied—supported by substantial evidence].)[5]

IV. Appellant Waived His Challenge to the Officer's Knowledge of the Search Condition Attached to Appellant's Probation

Because a search condition is statutorily mandated for all parolees (§ 3067, subd. (b)(3); *People v. Schmitz* (2012) 55 Cal.4th

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[5] To the extent appellant contends the prosecution failed to lay a sufficient foundation regarding the general accuracy and/or source of the MDC data, any such challenge is forfeited. In the trial court defense counsel interposed no objections to Meza's testimony regarding his reliance on the MDC printout nor did counsel conduct any cross-examination of the deputy on the subject. (See *People v. Douglas*, *supra*, 240 Cal.App.4th at p. 871, fn. 10 [defendant waived any hearsay objections to source of information relied upon by officer during his testimony at suppression hearing]; *id.* at p. 870, fn. 9 [lack of any cross-examination failed to call into question officer's testimony on relevant points].)

909, 916), the officer need only know that the individual is on parole (*People v. Middleton* (2005) 131 Cal.App.4th 732, 739–740). By contrast, in the case of probationers, "[a] search condition is not mandated by statute for every probationer, and probation search clauses are not worded uniformly. . . . Thus, . . . the officer must have some knowledge not just of the fact someone is on probation, but of the existence of a search clause broad enough to justify the search at issue." (*People v. Douglas*, *supra*, 240 Cal.App.4th at p. 863.)

Here, the initial probation order, judicially noticed by the trial court, indicated that appellant was sentenced on January 30, 2014, with a "condition of his probation . . . that he submit his person and property to search and seizure any time of the day or night." However, as appellant notes, the MDC printout does not reflect the search condition, and the prosecutor elicited no testimony that the officer was aware of the court order or otherwise had any reason to believe that the probation status included a search condition. Appellant's failure to raise this issue below forfeited any challenge regarding the search condition on appeal.

In *Williams*, *supra*, 20 Cal.4th 119, the California Supreme Court set out a three-step procedure to define the relative obligations of the parties in litigating a suppression motion: "[W]hen defendants move to suppress evidence, they must set forth the factual and legal bases for the motion . . . by making a prima facie showing that the police acted without a warrant. The prosecution then has the burden of proving some justification for the warrantless search or seizure, after which, defendants can respond by pointing out any inadequacies in that justification." (*Id.* at p. 136.) The court explained, "The prosecution retains the burden of proving that the warrantless search or seizure was reasonable under the circumstances. [Citations.] But, if defendants

detect a critical gap in the prosecution's proof or a flaw in its legal analysis, they must object on that basis to admission of the evidence or risk forfeiting the issue on appeal." (*Id.* at p. 130.) Thus, where a defendant fails to give the prosecution sufficient notice of such inadequacies he or she cannot raise the issue on appeal. (*Id.* at p. 136.) "The determinative inquiry in all cases is whether the party opposing the motion had fair notice of the moving party's argument and fair opportunity to present responsive evidence." (*Id.* at p. 135.)

Here, after the prosecution presented evidence that Deputy Meza had relied on information from the MDC printout to justify the search, appellant was required to point out any inadequacies in the justification to avoid forfeiture of the issue. He did not do so: He did not object to any of Deputy Meza's testimony or challenge the deputy's reliance on the MDC printout, nor did he conduct any cross-examination on the point. The issue is thus forfeited. (*Williams, supra*, 20 Cal.4th at pp. 128–129; see also *People v. Rios*, *supra*, 193 Cal.App.4th at p. 591 [defendant waived challenge to prosecution's failure to prove scope and terms of probation search condition by failing to raise issue in trial court].)

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED.

LUI, P. J.

We concur:

CHAVEZ, J.

HOFFSTADT, J.